

APPLICANT:
Wayne Leach

REQUEST: A variance pursuant to
§ 267-26C(6) of the Harford County Code
to allow a shed to be located within a
recorded easement

HEARING DATE: March 16, 2005

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

Case No. 5472

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Wayne Leach

LOCATION: 1924 South Ridge Road / South Ridge
Tax Map: 65 / Grid: 4F / Parcel: 997 / Lot: 18
Election District: First (1st)

PRESENT ZONING: R3 / Urban Residential

REQUEST: A variance pursuant to § 267-26C(6) of the Harford County Code to allow a shed
to be located within a recorded easement.

TESTIMONY AND EVIDENCE OF RECORD:

The Applicant is the owner of a .225 acre parcel of property located on South Ridge Drive, Edgewood, Maryland, zoned R3. The property is improved by a single family residence in which the Applicant, his wife and their six (6) children live.

Mr. Leach purchased the property about a year ago.

Mr. Leach quickly realized after moving into the property that he needed more room for his relatively large family. He decided to construct a storage shed to the rear of his property in which he would be able to store lawn equipment, toys, and other items which are now in the house and outside. The shed would free-up additional living space.

Mr. Leach originally wished to place his storage shed on one of his side property lines, but he concluded this may present a safety hazard as it would block his view into his adjoining neighbors properties. He likes to check on his neighbors and their property, and does not want his view into their back yards blocked.

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Mr. Leach plans in the future to put a deck onto the house and did not wish to put the shed anywhere in his rear property which would create a problem in locating that deck. The Applicant also intends to install a trampoline and pool for his children, in addition to the rear deck. The Applicant submitted a drawing which shows his planned future improvements to the property.

The shed itself was constructed by Mr. Leach before he realized he needed a permit. It is 24' x 12' in dimension, and is located about 3-1/2' off his rear yard lot line. The subject property, because it is zoned R3, is subject to a 3' rear yard setback. The shed is about 5' off the side yard property line, which is acceptable.

The shed, while it would comply with all applicable setbacks is, unfortunately, located in a Harford County Drainage and Utility Easement.

Mr. Leach stated that the rear part of his property, being that portion of the property which is in the Drainage and Utility Easement, slopes sharply downward. This portion of the property is not particularly useful for many purposes because of the slope. The shed which he has constructed is on a foundation which elevates it above this steep slope. Accordingly, the Applicant has made constructive use of this otherwise virtually unusable portion of this property.

Mr. Leach has spoken to his neighbors, and none have any objection. Letters had been submitted to the file evidencing this lack of objection.

Dennis Sigler of the Harford County Department of Planning and Zoning testified for the Department. Mr. Sigler reiterated the findings of the Department which is a finding of lack of sufficient justification for the requested variance. "The lot is not unique compared to others in the neighborhood. The topography is mainly level, except in the area of the easement. The shed is not on a permanent foundation and it appears that it can be relocated."

Mr. Sigler also indicated that while lots owned by other of Mr. Leach's neighbors were also encumbered by the same Drainage and Utility Easement, it is not common for all similarly R3 zoned lots in Harford County to be encumbered by such Drainage and Utility Easements.

The Harford County Department of Public Works submitted a letter to the file indicating their objection to allowing the shed to remain in the Drainage and Utility Easement, subject to the following conditions: 1) The shed must not be placed on a permanent foundation. 2) If it is determined that the location of the shed contributes to any drainage problems in the future, it must be moved out of the easement at the owners expense.

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APPLICABLE LAW:

§ 267-26 Accessory Uses and Structures states:

“A. *Generally, except as otherwise restricted by this Part I, customary accessory structures and uses shall be permitted in any district in connection with the principal permitted use within such district.*

C. *Use limitations. In addition to the other requirement of this Part I, an accessory use shall not be permitted unless it strictly complies with the following:*

(5)

(b) Residential detached accessory structure: 6' from any principal structure and 3' from side or rear yard lot lines, except for lots with recorded easements. For lots with recorded easements, the setback shall be equal to the width of the recorded easement.

(6) *No accessory use or structure, except fences, shall be located within any recorded easement area.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicant owns a single family home on approximately 1/4 acre of property, zoned R3 in which he, his wife, and six children live. The subject property is a relatively flat and usable parcel, with the exception of its rear 10' or so, which drops off sharply to a chain link fence along the rear property line. That portion of the property is encumbered by a 10' Drainage and Utility Easement.

Mr. Leach recently purchased the subject property and moved to Harford County. He was not aware of the requirements for a building permit for the shed, according to his testimony. Having six (6) children he wanted to create some storage space. His testimony was, and it is found to be credible, that he believed the most likely spot on his property for the construction of a storage shed was within the rear 10' of his property, being that portion which is of limited usability because of its slope. A review of the photographs in the file show that the 10' Drainage and Utility Easement is in no way marked or indicated on the property, and there is certainly no outward appearance that construction in that area would impact the Drainage and Utility Easement. Indeed, it does not appear that this structure in any practical way does impact the function of that easement.

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Except for the easement, Mr. Leach would be able to construct his shed at its present location. The required setback is 3' in this R3 District.¹

While a close question, it is nevertheless found that Mr. Leach does suffer a practical difficulty in that if it were not for the existence of the Harford County Drainage and Utility Easement, the shed could be located at its present location. That location is the most practical one, given the topography of the property and Mr. Leach's plans to construct improvements on the remaining portion of his backyard for the use of his children.

Without the variance Mr. Leach would suffer a practical difficulty in not being allowed to fully utilize that portion of his property. Neither the Department of Public Works nor any neighbor has expressed any objection or voiced any concern about adverse impact. Accordingly, it is found that the variance, if granted, will have no adverse impact on any adjoining neighbor or property.

CONCLUSION:

It is accordingly recommended that the requested variance be granted, subject to the following:

1. The Applicant obtaining all necessary permits.
2. The shed must not be placed on a permanent foundation.
3. When and if it is determined by the Harford County Department of Public Works that the location of the shed contributes to any drainage problems, the shed must be removed from the easement area at the owners expense.

Date: April 4, 2005

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

¹ During the hearing it was incorrectly assumed that the rear yard setback was 15'.